

AMENDED IN ASSEMBLY AUGUST 4, 2008

AMENDED IN ASSEMBLY JUNE 19, 2008

SENATE BILL

No. 28

Introduced by Senator Simitian

December 4, 2006

~~An act to amend Section 23123 of the Vehicle Code, relating to vehicles.~~ *An act to amend Section 12810.3 of, and to add Section 23123.5 to, the Vehicle Code, relating to vehicles.*

LEGISLATIVE COUNSEL'S DIGEST

SB 28, as amended, Simitian. Motor vehicles: ~~mobile service device.~~ *electronic wireless communications device.*

(1) Under existing law, on and after July 1, 2008, it ~~will be~~ *is* an infraction for any person to drive a motor vehicle while using a wireless telephone, unless that telephone is designed and configured to allow hands-free listening and talking operation, and is used in that manner while driving, except as otherwise provided. A violation point is not given for a violation. A violation is punishable by a base fine of \$20 for a first offense and \$50 for each subsequent offense.

This bill would also prohibit ~~the use of a mobile service device, as defined, and would add other, specified exceptions to these provisions~~ *a person from driving a motor vehicle while using an electronic wireless communications device to write, send, or read a text-based communication, except as specified. The bill would also provide that a violation point is not given for a violation of these provisions and would impose a base fine of \$20 for a first offense and \$50 for each subsequent offense.* By creating a new infraction, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 12810.3 of the Vehicle Code is amended*
2 *to read:*

3 12810.3. (a) Notwithstanding subdivision (f) of Section 12810,
4 a violation point shall not be given for a conviction of a violation
5 of subdivision (a) of Section 23123, *subdivision (a) of Section*
6 23123.5, or subdivision (b) of Section 23124.

7 (b) This section shall become operative on July 1, 2008.

8 *SEC. 2. Section 23123.5 is added to the Vehicle Code, to read:*

9 23123.5. (a) *A person shall not drive a motor vehicle while*
10 *using an electronic wireless communications device to write, send,*
11 *or read a text-based communication.*

12 (b) *As used in this section “write, send, or read a text-based*
13 *communication” means using an electronic wireless*
14 *communications device to manually communicate with any person*
15 *using a text-based communication, including, but not limited to,*
16 *communications referred to as a text message, instant message,*
17 *or electronic mail.*

18 (c) *For purposes of this section, a person shall not be deemed*
19 *to be writing, reading, or sending a text-based communication if*
20 *the person reads, selects, or enters a telephone number or name*
21 *in an electronic wireless communications device for the purpose*
22 *of making or receiving a telephone call.*

23 (d) *A violation of this section is an infraction punishable by a*
24 *base fine of twenty dollars (\$20) for a first offense and fifty dollars*
25 *(\$50) for each subsequent offense.*

26 (e) *This section does not apply to an emergency services*
27 *professional using an electronic wireless communications device*
28 *while operating an authorized emergency vehicle, as defined in*
29 *Section 165, in the course and scope of his or her duties.*

1 ~~SECTION 1. Section 23123 of the Vehicle Code, as amended~~
2 ~~by Section 2 of Chapter 214 of the Statutes of 2007, is amended~~
3 ~~to read:~~

4 ~~23123. (a) A person shall not drive a motor vehicle while using~~
5 ~~a mobile service device or a wireless telephone unless that~~
6 ~~telephone is specifically designed and configured to allow~~
7 ~~hands-free listening and talking, and is used in that manner while~~
8 ~~driving. As used in this section, “mobile service device” includes,~~
9 ~~but is not limited to, a broadband personal communication device,~~
10 ~~a specialized mobile radio device, a handheld device or laptop~~
11 ~~computer with mobile data access, a pager, or a two-way messaging~~
12 ~~device.~~

13 ~~(b) A violation of this section is an infraction punishable by a~~
14 ~~base fine of twenty dollars (\$20) for a first offense and fifty dollars~~
15 ~~(\$50) for each subsequent offense.~~

16 ~~(c) This section does not apply to a person using a wireless~~
17 ~~telephone for emergency purposes, including, but not limited to,~~
18 ~~an emergency call to a law enforcement agency, health care~~
19 ~~provider, fire department, or other emergency services agency or~~
20 ~~entity.~~

21 ~~(d) This section does not apply to an emergency services~~
22 ~~professional using a wireless telephone while operating an~~
23 ~~authorized emergency vehicle, as defined in Section 165, in the~~
24 ~~course and scope of his or her duties.~~

25 ~~(e) This section does not apply to a person when using a digital~~
26 ~~two-way radio that utilizes a wireless telephone that operates by~~
27 ~~depressing a push-to-talk feature and does not require immediate~~
28 ~~proximity to the ear of the user, and the person is driving one of~~
29 ~~the following vehicles:~~

30 ~~(1) (A) A motor truck, as defined in Section 410, or a truck~~
31 ~~tractor, as defined in Section 655, that requires either a commercial~~
32 ~~class A or class B driver’s license to operate.~~

33 ~~(B) The exemption under subparagraph (A) does not apply to~~
34 ~~a person driving a pickup truck, as defined in Section 471.~~

35 ~~(2) An implement of husbandry that is listed or described in~~
36 ~~Chapter 1 (commencing with Section 36000) of Division 16.~~

37 ~~(3) A farm vehicle that is exempt from registration and displays~~
38 ~~an identification plate as specified in Section 5014 and is listed in~~
39 ~~Section 36101.~~

~~(4) A commercial vehicle, as defined in Section 260, that is registered to a farmer and driven by the farmer or an employee of the farmer, and is used in conducting commercial agricultural operations, including, but not limited to, transporting agricultural products, farm machinery, or farm supplies to, or from, a farm.~~

~~(5) A tow truck, as defined in Section 615.~~

~~(f) This section does not apply to a person driving a schoolbus or transit vehicle that is subject to Section 23125.~~

~~(g) This section does not apply to a person while driving a motor vehicle on private property.~~

~~(h) This section does not apply to the equipment specified in subdivision (b) of Section 27602 when installed in a vehicle.~~

~~(i) This section shall become operative on July 1, 2008, and shall remain in effect only until July 1, 2011, and, as of July 1, 2011, is repealed.~~

~~SEC. 2. Section 23123 of the Vehicle Code, as amended by Section 3 of Chapter 214 of the Statutes of 2007, is amended to read:~~

~~23123. (a) A person shall not drive a motor vehicle while using a mobile service device or a wireless telephone unless that telephone is specifically designed and configured to allow hands-free listening and talking, and is used in that manner while driving. As used in this section, "mobile service device" includes, but is not limited to, a broadband personal communication device, a specialized mobile radio device, a handheld device or laptop computer with mobile data access, a pager, or a two-way messaging device.~~

~~(b) A violation of this section is an infraction punishable by a base fine of twenty dollars (\$20) for a first offense and fifty dollars (\$50) for each subsequent offense.~~

~~(c) This section does not apply to a person using a wireless telephone for emergency purposes, including, but not limited to, an emergency call to a law enforcement agency, health care provider, fire department, or other emergency services agency or entity.~~

~~(d) This section does not apply to an emergency services professional using a wireless telephone while operating an authorized emergency vehicle, as defined in Section 165, in the course and scope of his or her duties.~~

1 ~~(e) This section does not apply to a person driving a schoolbus~~
2 ~~or transit vehicle that is subject to Section 23125.~~

3 ~~(f) This section does not apply to a person while driving a motor~~
4 ~~vehicle on private property.~~

5 ~~(g) This section does not apply to the equipment specified in~~
6 ~~subdivision (b) of Section 27602 when installed in a vehicle.~~

7 ~~(h) This section shall become operative on July 1, 2011.~~

8 SEC. 3. No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section 17556 of
14 the Government Code, or changes the definition of a crime within
15 the meaning of Section 6 of Article XIII B of the California
16 Constitution.